EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 28616/17
Nikolaos AGGLOUPAS
against Greece

The European Court of Human Rights (Third Section), sitting on 23 May 2023 as a Committee composed of:

Yonko Grozev*, President*,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 28616/17) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 April 2017 by a Greek national, Mr Nikolaos Aggloupas ("the applicant"), who was born in 1943 and lives in Athens and who was represented by Mr V. Chirdaris, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government ("the Government"), represented by their Agent's delegates, Mr K. Georgiadis, Senior Adviser, and Ms A. Dimitrakopoulou, Legal Representative at the State Legal Council;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns complaints by the applicant that the non-cancellation of unpaid customs duties and taxes imposed on him was in breach of Article 6 § 2 of the Convention and of the presumption of innocence stemming from his acquittal in criminal proceedings for the offence of smuggling.

2. On 21 May 1998 the applicant was acquitted on smuggling charges by judgment no. 36398/1998 of the Athens Criminal Court of First Instance for

importing two luxury vehicles into Greece in 1992 without paying customs duties and taxes and using those vehicles without prior clearance from the customs authorities.

3. On 1 March 2001 administrative decision no. 33/96 imposed administrative fines equivalent to EUR 781,465.31 and EUR 706,455.02 on the applicant for failing to pay customs duties and taxes (*πολλαπλό τέλος*) for the first and second vehicles respectively. It also required him to pay unpaid customs duties and taxes equivalent to EUR 390,732.65 for importing and using the first vehicle, as it had not been confiscated.

4. The applicant took his case to the administrative authorities and the domestic courts, referring to his acquittal in the criminal proceedings which had become final in 1998. The Piraeus Administrative Court of First Instance dismissed his application against administrative decision no. 33/96 in its judgment no. 2814/2002. He lodged an appeal, which was dismissed by judgment no. 1461/2008 of the Piraeus Court of Appeal. The Supreme Administrative Court subsequently dismissed an appeal on points of law by the applicant in its judgment no. 3457/2012.

5. On 28 January 2013 the applicant lodged application no. 9028/13 with the Court, complaining in particular of a violation of Article 4 of Protocol No. 7 and Article 6 § 2 of the Convention on the basis that the domestic courts had not taken his criminal acquittal into account. In *Kapetanios and Others v. Greece* (nos. 3453/12, 42941/12 and 9028/13, 30 April 2015), the Court held, as regards Article 4 of Protocol No. 7, that the administrative fines in question were criminal in nature, given their severity and their deterrent effect (ibid., §§ 52-56). The offences of which the applicant had been accused in the administrative and criminal courts referred to the same conduct occurring over the same period (ibid., § 68). Accordingly, following the criminal acquittal, the administrative fines should not have been imposed on the applicant (ibid., § 72). The Court concluded that the administrative proceedings relating to the imposition of the fines concerned a second "offence" originating in identical acts to those forming the subject matter of the first criminal acquittal, which had become final. It thus found a violation of Article 4 of Protocol No. 7 to the Convention (ibid., §§ 74-75).

6. As regards Article 6 § 2 of the Convention, the Court held that, after assessing the material in the case files in a different manner from the criminal courts, the administrative courts had held that the applicant had committed the same offence of smuggling of which he had previously been acquitted by the criminal court. These conclusions had subsequently been upheld with final effect by the Supreme Administrative Court. Given the similar nature of the two sets of proceedings in issue, the facts involved and the constituent elements of the offences concerned, the finding of the administrative courts had breached the applicant's right under Article 6 § 2 of the Convention to be

presumed innocent in the light of his prior acquittal by the criminal court (ibid., § 88).

7. Following the Court's judgment, on 8 December 2015 the applicant applied for the reopening of the proceedings in the Supreme Administrative Court. In judgment no. 1992/2016 of 19 October 2016, the Supreme Administrative Court partially accepted the application for reopening, quashed its judgment no. 3457/2012 (see paragraph 4 above) and cancelled the two administrative fines of EUR 781,465.31 and EUR 706,455.02. It held in particular that it was clear from the reasoning of *Kapetanios and Others* (cited above) that the violations found to have been committed by the Greek State concerned only the administrative proceedings relating to the administrative fines imposed on the applicant for not paying customs duties and taxes, and did not concern the requirement for him to pay the unpaid customs duties and taxes themselves. The Supreme Court referred in particular to paragraphs 29, 55, 61-65, 72, 74, 79, 86 and 88 of *Kapetanios and Others*. It therefore dismissed the application to reopen the Supreme Administrative Court proceedings which had been concluded by final judgment no. 3457/2012 in so far as the demand for unpaid customs duties and taxes of EUR 390,732.65 was concerned. It held that that part of the application did not fulfil one of the conditions required by the Supreme Administrative Court, namely that the finding of a violation of the Convention by the Court should be causally linked to the reasoning and operative parts of the Supreme Administrative Court judgment which had dismissed the appeal on points of law (in this particular case, judgment no. 3457/2012).

8. The applicant complained that the non-cancellation of the demand for the unpaid customs duties and taxes was in breach of Article 6 § 2 and the presumption of innocence stemming from his acquittal in the criminal proceedings for the offence of smuggling.

THE COURT'S ASSESSMENT

9. The general principles concerning requests to a domestic court to reopen proceedings following the finding of a violation by the Court have been summarised in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, §§ 46-51, 11 July 2017). As regards the general principles on the presumption of innocence where sentences are imposed by administrative courts following acquittals in criminal proceedings, these have been summarised in *Kapetanios and Others* (cited above, §§ 62-64).

10. The Government maintained that the *Kapetanios and Others* judgment did not contain any references to the demand for unpaid customs duties and taxes by the administrative authorities as it related solely to the issue of the imposition of administrative fines. The finding of a violation of Article 6 § 2 of the Convention did not concern the unpaid customs duties

and taxes and the Supreme Administrative Court had been correct in holding that it was not bound by the *Kapetanios and Others* judgment as regards the unpaid customs duties and taxes and that there was no need to quash judgment no. 3457/2012 in its entirety in order to ensure the compliance of the State with the *Kapetanios and Others* judgment. By the partial cancellation of administrative decision no. 33/96, in so far as it had imposed administrative fines, a balance had been struck between the need for effective judicial protection of the applicant and the requirement to observe *res judicata*.

11. The applicant disagreed, maintaining that it followed from judgment no. 1992/2016 of the Supreme Administrative Court that he was guilty of the offence of smuggling of which he had been finally acquitted by the criminal courts, because the judgment had not cancelled the demands for the unpaid customs duties and taxes. He argued that despite the criminal courts' finding that he had lawfully used the vehicles and had not committed the offence of smuggling, and despite the Court's having found a violation of Article 6 § 2 of the Convention, he was still subject to a demand for unpaid customs duties and taxes of EUR 390,732.65, leaving a sense that he was guilty of the smuggling offence. The Supreme Administrative Court had wrongly interpreted the *Kapetanios and Others* judgment in judgment no. 1992/2016 and had cancelled only the administrative fines imposed on him for having failed to pay customs duties and taxes but not the unpaid customs duties and taxes themselves. It should have set aside administrative decision no. 33/96 in its entirety.

12. The Court notes that in *Kapetanios and Others*, in particular in the description of the facts in application no. 9028/13, it stated that the administrative fines imposed by the competent administrative authorities on the applicant were the equivalent of EUR 781,465.31 and EUR 706,455.02, corresponding to twice the amount of the unpaid customs duties and taxes (ibid., § 29). Furthermore, in the domestic law part of that judgment, the Court referred to Article 97 of Law no. 1165/1918 (the Customs Code, as applicable at the time), which provided for an administrative fine in the event of failure to pay customs duties and taxes (*πολλαπλο τέλος*) (ibid., § 38), and in the part concerning relevant case-law, it referred to Supreme Administrative Court judgments according to which the imposition of an administrative fine was independent from criminal proceedings for the offence of smuggling (ibid., §§ 43-46). In examining whether there had been a breach of the *ne bis in idem* principle, the Court referred solely to the administrative fines that had been imposed (ibid., §§ 55-56, 65, 72 and 74, for instance); moreover, in outlining the parties' arguments under Article 6 § 2 of the Convention, the Court stated that the applicants had maintained that the "administrative court judgments that confirmed the administrative fines" had directly infringed the principle of the presumption of innocence stemming from the applicant's acquittal in the criminal proceedings (ibid., § 81). The Court went on to hold (ibid., § 86) that the

nature of the administrative proceedings and the context in which the administrative courts' judgments were given indicated that they related to criminal matters and that the sanctions imposed in both the criminal and administrative proceedings were punitive in character. The facts were identical and the constituent elements of the offences were the same.

13. In judgment no. 1992/2016, the Supreme Administrative Court established certain requirements for a request for reopening to be accepted (see paragraph 7 above). The first was a causal link between the violation of the Convention found by the Court and the reasoning and operative part of the domestic judgment complained of. The Supreme Administrative Court thus held that this requirement was not fulfilled in so far as the application for reopening concerned the unpaid taxes and customs duties for the illegal importation and use of the vehicle, because the violations found in *Kapetanios and Others* clearly concerned the administrative proceedings in which the administrative fines had been imposed on the applicant and did not concern the demand for the unpaid customs duties and taxes.

14. The Court cannot accept the applicant's arguments that judgment no. 1992/2016 violated the presumption of his innocence by not discharging him from the obligation to pay the unpaid customs duties and taxes, because the *Kapetanios and Others* judgment addressed the administrative proceedings under Article 6 § 2 of the Convention in so far as they concerned the imposition of the administrative fines and not the obligation to pay the unpaid customs duties and taxes. In that respect, it cannot be said that judgment no. 1992/2016 is contrary to *Kapetanios and Others* and its findings as regards the presumption of the applicant's innocence, as protected under Article 6 § 2 of the Convention.

15. The Court therefore considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2023.

Olga Chernishova Deputy Registrar	Yonko Grozev President